

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHELLE L. FARRA
Claimant

VS.

MERCY HOSPITAL
Self-Insured Respondent

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Docket No. 1,005,822

ORDER

Respondent requests review of the January 3, 2005 preliminary hearing Order entered by Special Administrative Law Judge (SALJ) Marvin Appling.

ISSUES

Following a preliminary hearing, the SALJ denied respondent's motion to terminate temporary total disability and medical benefits. He further refused to overrule an earlier finding by the Appeals Board that claimant's present and ongoing need for psychiatric treatment stems from an injury that arose out of and in the course of her employment, and ordered Dr. V.J. Reddy to continue in his capacity as the authorized treating physician.

The respondent asserts that the SALJ exceeded his jurisdiction in denying its motion in light of the new evidence offered at the most recent preliminary hearing. Specifically, respondent maintains that the medical opinions expressed by the court-ordered independent medical examiner, Dr. John Chelf, justify a finding that claimant's psychiatric treatment pre-existed her March 19, 2002 work-related injury and regardless of her work-related injury, she would have required the psychiatric treatment she presently receives. Put another way, claimant's work-related accident did not aggravate, accelerate or intensify her psychiatric problems. Accordingly, respondent maintains that it should not be held responsible for the claimant's ongoing psychiatric treatment or her present inability to engage in any substantial gainful employment.

Claimant has not filed a brief, but would presumably rely on the opinions of Dr. Reddy, her treating physician who believes the chronology of the events point toward her psychiatric symptoms being related to her work-related injury.

The Board must address the following issues:

1. Whether the SALJ exceeded his jurisdiction in denying respondent's request to terminate benefits; and
2. Whether claimant sustained a psychological/psychiatric injury as a result of her work-related injury.

FINDINGS OF FACT

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

This claim involves a rather lengthy procedural history that bears repeating.

1. On December 19, 2003, claimant requested but was denied psychiatric/psychological treatment. The ALJ who heard this request justified his denial as follows:

The Court is at a complete loss to see how falling from a chair and landing on your buttocks with no documented physical findings of any severe injury could cause one to suffer psychiatric impairment. The Court must agree with the diagnosis of Dr. Hughes that the [c]laimant has malingered psychiatric complaints.¹

2. That preliminary hearing Order was appealed to the Board and on May 27, 2004, the Board issued its Order and stated the following:

The Board finds it has the jurisdiction to review the issues of whether claimant has a psychiatric/psychological condition and, if so, whether it arose out of her employment. Based on the record compiled to date, the Board finds that claimant has a psychiatric condition that is directly traceable to her work-related injury.²

3. At that point, the only evidence bearing upon the pending issues were limited to an office note authored by Dr. Pandu Chillal, an internist, a report authored by Dr. Reddy, a psychiatrist, dated October 1, 2003, the report of Dr. Andrew Revelis, a psychiatrist, and a report of Dr. Patrick Hughes, a psychiatrist.

¹ ALJ Order (Dec. 19, 2003).

² Board Order (May 27, 2004). This Order represents a change in philosophy for the Board. Prior to this opinion, the issue of whether an injured employee sustained a psychological or psychiatric injury following a compensable physical injury was considered non-jurisdictional on an appeal from a preliminary hearing order. That philosophy was revisited and with the Board's May 27, 2004 opinion, the issue became an appropriate one for an appeal.

4. Dr. Hughes, a physician retained by respondent to examine claimant, opined that claimant was suffering from a pain disorder with psychological features. He further concluded that her condition was not related to her work-related injury.

5. Dr. Revelis diagnosed claimant with bilateral sacroilitis, low back pain, myofacial pain with anxiety and depression and overlaying pain disorder. In his October 10, 2003 report Dr. Revelis found claimant to be a maximum medical improvement.

6. Claimant was also being treated by Dr. V.J. Reddy who had diagnosed claimant with a bipolar I disorder, mixed type with psychosis, a panic disorder and a general anxiety disorder. Dr. Reddy has opined that claimant's chronology of events "points toward her psychiatric symptoms being related to her injury sustained at work."³ Both he and Teri R. Sutherlin, claimant's psychotherapist, disagree with the opinions expressed by Dr. Hughes.

7. On September 22, 2004, claimant again requested a preliminary hearing on the issue of continued psychiatric/psychological treatment with Dr. Reddy and Teri Sutherlin as well as the issue of temporary total disability (TTD) benefits. That matter was heard by Special Administrative Law Judge E.L. Kinch, on September 29, 2004. SALJ Kinch granted claimant's request for TTD benefits from September 16, 2003 to October 1, 2003. He further ordered claimant to provide current records from Dr. Reddy (apparently for the purpose of determining whether claimant was entitled to ongoing TTD benefits) and directed the parties to agree upon a neutral psychologist to perform an IME and, in the event no agreement was reached, the SALJ would appoint a neutral himself.

8. On October 21, 2004, SALJ Kinch issued a supplemental order finding claimant was entitled to temporary total disability benefits beginning October 1, 2003. He also appointed Dr. John Chelf to serve as the independent medical examiner addressing the issues of diagnosis, causation, treatment and whether claimant was temporarily totally disabled, and if not, then an opinion as to the extent of her permanent partial disability, if any. Based upon the parties' briefs, Dr. Chelf was a physician suggested by respondent's counsel but agreed to by claimant's counsel.

9. Dr. Chelf examined claimant on November 1, 2004. Not only did he personally examine claimant for a period of approximately 65 minutes, he reviewed claimant's extensive medical history. His report itemizes all of the records provided to him, including those generated by claimant's most recent hospitalization in September 2004 for self-mutilation.

³ Motion Hearing Trans., Cl. Ex. 5 (Oct. 1, 2004 letter).

10. According to Dr. Chelf, claimant's "past psychiatric history begins about 1994 with a history of insomnia, inability to relax and feelings of frustration during a divorce."⁴ He further indicated she had a similar episode in May 2001, prior to the accident at issue in this claim.

11. Dr. Chelf diagnosed bipolar disorder, pain and panic disorder and a generalized anxiety disorder. While he concluded she was in need of additional psychiatric care, including medication and therapy, he stated that "[h]er condition began before her accident on March 19, 2002 *and has continued to worsen*."⁵ He further opined that she is temporarily totally disabled, but that her disability is not a result of events on March 19, 2002.⁶

12. Respondent's counsel contacted Dr. Chelf and asked him to clarify certain causation issues relating to claimant's condition. According to respondent's counsel, these questions were tailored to meet the evidentiary standards set forth in *Adamson*.⁷ Dr. Chelf indicated that claimant's psychiatric or psychological diagnosis is *not* directly traceable to her physical injury symptoms or initial trauma nor is it a direct and natural consequence of that injury.⁸ He further opined that her physical condition, as it relates to her accident, has not been increased or prolonged by her psychiatric or psychological condition. Moreover, he suggested that "[m]ore likely than not, she would be at or near the same point without regard to the March 19, 2002 accident."⁹

13. Dr. Kenneth Johnson diagnosed claimant with cervical and lumbar strain, mild degenerative disk and spine disease, and post-morbid¹⁰ mood disorder with depression and/or anxiety.¹¹

14. After receiving Dr. Chelf's supplemental report dated December 21, 2004, respondent filed a motion to terminate psychiatric or psychological medical treatment and

⁴ *Id.*, Resp. Ex. 5 at 2 (Dr. Chelf's Nov. 1, 2004 Psychological evaluation).

⁵ *Id.* at 3.

⁶ *Id.*

⁷ *Adamson v. Davis Moore Datsun, Inc.*, 19 Kan. App. 2d 301, 868 P.2d 546 (1994).

⁸ Motion Hearing Trans., Resp. Ex. 1.

⁹ *Id.*

¹⁰ *Id.*, Cl. Ex. 6. Dr. Johnson initially stated that her psychiatric condition was *premorbid* but in a letter dated June 17, 2003, he "apologized for the grave mistake" he made in his report. He concluded her mood disorder was post-morbid and was contributing to her difficulties with perceptions of pain. (*Id.*, Cl. Ex. 3)

¹¹ *Id.*

TTD benefits. Respondent contends the opinions of Dr. Reddy on the issue of causation are compromised as he apparently did not know of claimant's pre-existing psychiatric or psychological condition. Instead, as demonstrated by the written reports authored by Dr. Chelf, respondent maintains claimant is not entitled to the treatment and TTD benefits she has been receiving as her psychiatric or psychological condition has not been impacted in any way as a result of the physical injury she sustained on March 19, 2002.

15. The ALJ denied respondent's motion and in doing so, stated as follows:

The [r]espondent's motion requesting the Administrative Law Judge to find that the accident did not arise out of and in the course of employment is overruled at this time. The Court will review the question of whether it arose out of and in the course of employment at the time the case is fully submitted. The Board has found that the accident did arise out of and in the course of employment and this Administrative Law Judge will not overrule that decision based upon a letter from a doctor.¹²

CONCLUSIONS OF LAW

As indicated in the Board's previous Order in this claim, the Board has recently concluded it has jurisdiction to review the issues of whether claimant has a psychiatric/psychological condition at the preliminary hearing stage and, if so, whether it arose out of her employment.¹³ Because there is no limit to the number of preliminary hearings that can be held in any given workers compensation matter,¹⁴ the decision of whether a claim is compensable, i.e. whether an injury arose out of and in the course of one's employment, can change based upon the evidence offered. This ongoing review, while contrary to general civil litigation principles, is a necessary procedure in the workers compensation field.

In this instance, additional evidence beyond that available at the first preliminary hearing was offered at the most recent preliminary hearing in the form of two separate written reports authored by the independent medical examiner selected by the parties. Dr. Chelf has opined in writing, a form that is typical in workers compensation settings, that claimant's psychiatric/psychological problems were not caused by her March 19, 2002 accident. He based this opinion upon his review of a litany of medical records and upon his interview/examination of claimant. Although he expressed his opinions in a bit more caustic tone, Dr. Patrick Hughes holds essentially the same view.

¹² ALJ Order (Jan. 3, 2005).

¹³ Board Order (May 27, 2004).

¹⁴ *Hanna v. M. Bruenger & Co., Inc. & Leona Bruenger & Co., Inc.*, No. 222,182, 1997 WL 802901 (Kan. WCAB Dec. 19, 1997).

In contrast are the opinions of Dr. Reddy and his associate, Teri R. Sutherlin. Both have concluded that claimant's March 19, 2002 accident set in motion her present psychiatric/psychological condition. The difficulty with their opinions is the fact that they did not seem to know of claimant's earlier history of onset, dating back to 1994.

The Board has considered each of the medical opinions and, contrary to the view of the SALJ, is persuaded by the opinions of Dr. Chelf. Dr. Chelf, more than Dr. Hughes or Dr. Reddy, has explored claimant's past medical history and has concluded that claimant's psychiatric/psychological complaints pre-date her March 19, 2002 work-related injury. He also indicates those complaints have not been accelerated or enhanced as a direct result of her physical injury. These opinions are in line with the criteria set forth in *Adamson*.¹⁵ For this reason, the Board finds that the SALJ's preliminary hearing Order denying respondent's motion to terminate benefits should be reversed. Based upon the evidence adduced *to date*, the Board is unpersuaded that claimant's psychiatric/psychological complaints arose out of her work related injury. Accordingly, medical and TTD benefits are not available to her under the Act. Claimant is, however, entitled to a final visit with Dr. Reddy so that she can be safely tapered off her psychiatric drugs as well as one final psychotherapy visit with her therapist for a final session to deal with termination and closure issues.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Special Administrative Law Judge Marvin Appling dated January 3, 2005, is reversed.

IT IS SO ORDERED.

Dated this _____ day of March, 2005.

BOARD MEMBER

c: Patrick C. Smith, Attorney for Claimant
Leigh C. Hudson, Attorney for Self-Insured Respondent
Marvin Appling, Special Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹⁵ *Adamson v. Davis Moore Datsun, Inc.*, 19 Kan. App. 2d 301, 868 P.2d 546 (1994).